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ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA  
Crl. Bail Appln. No.S-323 of 2017

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
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09.02.2018.

For hearing of Bail Application.

Mr. Athar Abbas Solangi, advocate for the applicant.

Mr. Habibullah G. Ghouri, advocate for the complainant.

Mr. Khadim Hussain Khooharo, Addl. P.G.

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Applicant Sartaj Ahmed son of Hussain Barijo is seeking post arrest bail in Crime No.32/2017 of Police Station Warah, under Section 395, PPC.

Complainant, namely, Muhammad Ilyas Bughio got the present FIR registered on 08.5.2017 at 2300 hours reporting an incident which occurred in his house on 24.4.2017 at 0145 hours in which allegedly six unknown accused duly armed with deadly weapons trespassed in his house and after overpowering the family members robbed as many as 17 different articles worth Rs.18,83,000/-, which include cash, licensed weapons, and different kind of ornaments, mobile phones etc. The name of applicant does not appear in the FIR, nor in the 161, Cr.P.C statements of witnesses recorded on the next day of the lodgment of FIR on 09.5.2017. However, on 15.5.2017 applicant was arrested on the basis of further statements of the witnesses, particularly of PW Suhail Ahmed, who is son of the complainant, describing that on 13.5.2017 while he was sitting in a hotel, he spotted the applicant and another person passing by in front of the said hotel, and identified them to be the culprits of the above offence. He approached them and asked about their names, but they avoided. However, somehow, he came to know about their names, one of them was present applicant and the other was Sartaj son of Ghulam Hyder Barejo. Such information was communicated to the police, consequently the applicant was arrested. After his arrest, some of the robbed articles were recovered from him. Consequently after due investigation the applicant was challaned along with other accused and currently he is facing the trial before Additional Sessions Judge, Kamber.



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Mr. Athar Abbas Solangi, learned defence Counsel, has argued that FIR has been registered with a delay of 14 days, but even then name of the applicant does not appear therein, nor in the 161 Cr.P.C statements of the witnesses; that the applicant has been falsely implicated in this case, as his brother, who is an advocate namely Mr. Ghulam Muhammad Barijo had filed an application under section 491 Cr.P.C against the SHO P.S Warah; that the complainant and other witnesses at the instance of said police officer have given further statements against the applicant; that the alleged recovery from the applicant is consisting of general items which are easily available in the market and more-so during the investigation said articles were not got identified by the witnesses before any Magistrate. Learned Counsel has further argued that since the name of applicant does not transpire in the FIR, it was incumbent upon the investigating officer to get him identified through identification parade but as this exercise has not been done, the case against the applicant is of further enquiry. He has next contended that the charge has been framed but complainant's party is not appearing in the trial Court for evidence. In support of his arguments, he has relied upon the cases of *Saghir Ahmad v. The State* (1999 MLD 1258), *Gulzar v. The State* (2011 MLD 830), *Shehzore v. The State* (2006 YLR 3167), *Saeed Chandio v. The State* (2009 MLD 1407), *Atta Muhammad v. the State* (2004 PCr.LJ 1431) and *Jamshaid Asmat v. The State* (2011 SCMR 1405).

On the other hand, complainant's Counsel has opposed grant of bail to the applicant and has submitted that there is a *prima facie* evidence against the applicant and he is involved in a case of heinous nature. He has further submitted that the delay is of no use to the applicant because he is not nominated therein.

Learned Addl. Prosecutor General has also opposed grant of bail to the applicant and has submitted that the applicant has a criminal history of being involved in so many cases of like nature since 2005.


I have considered submissions of the parties and have perused the material available on record including the case-law cited at bar. It goes without saying that the decision in the bail application is to be made on the basis of tentative evaluation of the material available on



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record. There is evidence against the applicant that he was spotted by the witnesses after the incident on 13.5.2017 and identified to be one of the culprits, which led to his arrest on 15.5.2017 and after his arrest some of the robbed articles were recovered from him, which *prima facie* connects him with the commission of offence. There is no material to show that the applicant has been implicated falsely in this case out of some malafide, because in such eventuality the complainant would have nominated him in the FIR. The holding of identification parade of the applicant does not seem to be a mandatory requirement either in the present case because the applicant was already spotted and was identified by the witnesses and such information was communicated to the police, therefore, in such circumstances holding his identification parade would have been meaningless. As far as the argument of learned defence Counsel that the FIR is delayed, it may be stated that the delay in the FIR is of no help to the applicant because he is not nominated therein. The applicant appears to be involved in an offence of heinous nature besides he has a criminal history of being involved in so many cases of like nature. In the said facts and circumstances, I am not persuaded to grant bail to the applicant. The bail application is dismissed accordingly. However, since it has been informed that the charge has been framed, the trial Court is directed to examine the material witnesses within a period of 04 months. After lapse of said period, the applicant would, however, be at liberty to repeat his bail application before the trial Court, which, if filed, shall be decided in accordance with law.

The above observations are tentative in nature and shall not prejudice the case of either party before the trial Court.

  
JUDGE 9-2-2018